

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL REYNOLDS, CARLOS CRUZ, TYRONE
McGRAW, MADRICK WALLACE, and LINDA
GRIER, individually and on behalf of all other
persons similarly situated,

Plaintiffs,

-v-

ALLYN SIELAFF, Commissioner, New York City
Department of Correction, *et al.*,

Defendants.

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/23/09

No. 81 Civ. 107 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

Before the Court is the attached March 13, 2009 stipulation regarding the release of medical and mental health records relating to members of Plaintiff's class (the "class members"). The release of the records in question relates to the discovery that is to be conducted in connection with Defendants' pending motion to terminate the August 1, 1990 Consent Judgment in this matter.

The stipulation indicates that the parties have jointly conferred in order to ensure that adequate protections are afforded to class members' privacy rights under state and federal law. The parties represent to the Court that the class members' interest in "the expeditious and fair resolution" of Defendants' pending motion "significantly outweigh[s]" the privacy and confidentiality interests implicated by disclosure of the class members' medical and mental health records according to the terms set forth herein. The parties further represent that the class members' representatives participated in the evaluation and balancing of these privacy interests, and that the class members' representatives join in the parties' request for disclosure of these records.

Accordingly, on the basis of the parties' representations, IT IS HEREBY ORDERED THAT notwithstanding federal laws or regulations concerning the confidentiality of medical and psychiatric records, including the Health Information Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d *et seq.*, and 45 C.F.R. § 164.502, and, to the extent that State law applies, New York Public Health Law § 2782 (relating to HIV-related information), New York Public Health Law § 2306 (relating to sexually transmissible disease information), New York Mental Hygiene Law § 33.13 (relating to maintenance of clinical records), and New York Civil Rights Law § 79-l(3)(a) (relating to the predisposition genetic testing information), Defendants may disclose in this litigation the medical and psychiatric records of any Plaintiff or class member, excluding substance abuse information that is confidential under 42 C.F.R. § 2.12 insofar as it is contained in these medical and psychiatric records. *See* 45 C.F.R. § 164.512(e)(1)(i) (authorizing disclosure pursuant to court order); N.Y. Pub. Health Law § 2306 (same); N.Y. Mental Hyg. Law § 33.13(c)(1) (same); N.Y. Civ. Rights Law § 79-l(4)(c) (same). Any such substance abuse information will not be withheld or redacted, unless the subject Plaintiff or class member objects to the disclosure of that information. The procedure by which a subject Plaintiff or class member may object to the disclosure of such substance abuse information will be set forth in a separate Order. Nothing in this Order resolves, or is intended to resolve, the question of whether these records contain substance abuse information that is confidential under 42 C.F.R. § 2.12; and

IT IS FURTHER ORDERED THAT documents produced pursuant to this Order shall be designated as "Confidential Materials" pursuant to the terms of the Court's February 19, 2009 Stipulated Protective Order (Doc. No. 127); and


IT IS FURTHER ORDERED THAT further disclosure of documents covered by this Order in this litigation shall be permitted only to the extent disclosure of "Confidential Materials" is

permitted by the Stipulated Protective Order; and

IT IS FURTHER ORDERED THAT neither Defendants, nor any of their employees or agents shall be held civilly, criminally, or professionally liable in this action or any other action for disclosing any information concerning the physical or mental health of the class members pursuant to the terms of this Order.

SO ORDERED.

Dated: March 23, 2009
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE